

## **DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM**

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### **Exhibits**

- Exhibit A: Pre-Approved Disadvantaged Business Enterprises (DBE)  
Program for Local Agencies**
- Exhibit B: Disadvantaged Business Enterprises (DBE) Annual Plan**

## **1. Overview**

### References:

49 CFR Part 23 (DBE Regulations)  
49 CFR Part 21 (Title VI Regulations)  
23 USC 140(b)  
23 CFR 200 & 230

### Applicability:

Applies to all federal-aid highway construction projects.

### Guidelines:

Local agencies applying for federal funds shall comply with all the elements of Title 49, Part 23 of the Code of Federal Regulations (CFR) entitled "Participation by Minority Business Enterprise in Department of Transportation Programs." These provisions require local agencies to maximize the use of minority and women owned businesses on local federal-aid construction contracts. Each local agency shall implement a Disadvantaged Business Enterprises (DBE) Program and establish an annual DBE Plan/Goal prior to submitting a "Request for Authorization" to proceed with the construction phase of a federal-aid project.

### **1.1 Definitions**

A DBE is a small business concern which is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. These individuals must be citizens of the United States and are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women owned businesses as DBE.

### **1.2 Caltrans Responsibilities**

Caltrans responsibilities are as follows:

- District Local Assistance Engineers (DLAE) will review and approve the local agency DBE Program and each Annual Plan/Goal.
- Office of Local Programs (OLP) and the DLAE will monitor the local agency's DBE program by conducting process reviews.
- DLAE reviews for completeness and sends Report of DBE Awards and Final Utilization forms to OLP.
- OLP will assemble statewide local agency DBE award and final utilization information and develop quarterly reports for FHWA.

### **1.3 Local Agency Responsibilities**

The local agency responsibilities include:

- Developing and implementing a DBE Program and establishing annual and project goals for participation by DBE before submitting a "Request for Authorization" for the construction phase of a federal-aid project.
- Designating a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the DBE Program.
- Completing the Report of DBE Awards and Utilization forms.
- Reviewing and taking action for noncompliance with DBE requirements by the local agency's contractors.

### **1.4 DBE Program**

A local agency has two options in complying with DBE Program requirements. The options are:

- Adopt the Office of Local Programs (OLP) "DBE Pre-Approved Program" (Exhibit A), or
- Develop its own DBE Program in compliance with all the program elements required by Part 23 of Title 49 CFR.

Under option one, the local agency shall adopt the OLP Pre-Approved DBE Program and submit it to the Caltrans District Local Assistance Engineer (DLAE) along with a copy of the public notification described below in Section 4.

Under option two, the local agency shall prepare its own DBE program with all the elements required by Part 23 of Title 49 CFR and submit it to the DLAE for review and approval. Upon approval of the draft program, the local agency will adopt it, proceed with the public notification and furnish the DLAE a signed copy along with the proof of publication.

## **2. Overall Process**

Participation by disadvantaged business enterprises is possible at four points in the process for developing local federal-aid transportation projects. They are Preliminary Engineering and Environmental Analysis, Final Design, Right of Way Acquisition and Construction.

Preliminary engineering studies and environmental analysis are the first steps in developing a local transportation project. Disadvantaged business enterprises may be engaged to perform all of these activities as a prime consultant or some of these activities as a member of a team of consultants.

Completion of final design and preparation of plans, specifications, and estimates normally are a continuation of preliminary engineering activities. However, in some situations the agency employs different consultants and professional teams to perform these final design activities. Disadvantaged business enterprises may be engaged at this point.

Acquisition of right of way for local transportation projects may be performed by the local agency or by a qualified consulting firm. Qualified disadvantaged business enterprises may be considered for performance of right of way activities.

Disadvantaged business enterprises may participate in bidding for construction contracts for projects developed by local agencies. There are other opportunities for participation in construction for disadvantaged business enterprises as suppliers, vendors, truckers, etc.

### **3. Disadvantaged Business Enterprises (DBE) Program Elements**

#### **3.1 Designate a DBE Liaison Officer.**

The Chief Executive Officer of the local agency shall designate the DBE liaison officer. This person shall be responsible for implementing the DBE program on a daily basis. This includes technical assistance for DBE, providing information about available business opportunities. This will provide the DBE an equal opportunity to bid on a local agency federal-aid project.

#### **3.2 Include DBE Contract Special Provisions in the PS&E.**

The local agency shall include DBE special provisions in each federal-aid project. For projects advertised with Caltrans' *Standard Specifications*, the DLAE can provide samples of these provisions.

#### **3.3 DBE Certification List**

The local agency shall use the approved DBE contractors on the Caltrans certified DBE list. The Caltrans DBE certification is available to project bidders through the Headquarters Business Enterprise Program.

### **4. Annual Goal/Public Notification**

#### **4.1 Annual Goal**

A local agency's DBE goal shall be set on an annual basis. Title 49 CFR requires a ten percent (10%) minimum DBE goal unless an exemption has been formally approved by the OLP. The local agency should have documentation on file to justify their proposed annual goals which must be formally approved by the Caltrans DLAE. (See Exhibit B for suggested form.)

#### **4.2 Project Goals**

The local agency will establish individual project goals based on the work performed and the availability of certified DBE contractors in the geographic area. These goals must be consistent with the following policies:

- Individual goals are established in order to achieve the DBE annual goals.
- The project analysis shall start with the availability and capacity of certified contractors (in the project area) to perform the items of work. The contractible items of work are evaluated by the local agency in light of the project type and size, and normal industry contracting practices.
- The contract goals shall be set to allow nondisadvantaged as well as DBE contractors to compete for contract work.

#### **4.3 Public Notification of Annual Goals**

Upon approval of the local agency's annual DBE goals, the local agency shall publish a notice in the various minority trade publications and general public media. This notice shall contain the following:

- The annual overall DBE goal.
- A statement that the goal and a description of how it was selected, will be available for public inspection for a period of 30 days.
- A statement that both the United States Department of Transportation (DOT) and the local agency will accept comments on the goal for 45 days from the date of the notice.
- Assurance that comments shall be used for informational purposes only.

The public notification shall be published (one day minimum) in a local newspaper of general circulation including a minority focus publication if available.

### **5. Exemptions**

A local agency may request an exemption from the ten percent minimum annual DBE goal by submitting a request to the DLAE. The DLAE will review the request, make a recommendation, and submit it to the OLP for approval or rejection. OLP approval or rejection will be based on the criteria contained in Part 23.65(B) of Title 49 CFR.

The DLAE will notify the local agency when the exemption request is approved or rejected. If the request is approved, the local agency may proceed with public notification.

## **6. Achievement Reporting**

### **6.1 Initial Report**

The local agency shall include a copy of the "Bidder DBE Information Form " in contract documents. This is provided by the contractor as part of the bid package. The local agency will utilize this information to complete the "Report of DBE Awards" form. (See Attachment 8 Construction Administration, Section 5 "Contract Awards".) The information in this report is required by Caltrans' Business Enterprise Program and the FHWA to demonstrate DBE compliance on local agency projects.

### **6.2 Final Report**

The "Final Utilization Report" is reviewed by the local agency and certified for completion and accuracy. The local agency must submit this report along with the request for final payment. (See Attachment 8 Construction Administration, Section 19 "Project Completion".)

**PRE-APPROVED**  
**DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM**  
**FOR LOCAL AGENCIES**

*(FHWA supports the use of this standard program description in accordance with Code of Federal Regulations 49, Part 23, Section 23.45 and other related sections)*

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

**CITY/COUNTY OF:** \_\_\_\_\_

**I. Policy Statement**

It is the policy of the \_\_\_\_\_  
to utilize Disadvantaged Business Enterprises (DBEs) and firms as defined in 49 CFR Part 23 in all  
aspects of contracting to the maximum extent feasible. This policy which is fully described herein  
constitutes policy and commitment to substantially increase DBE Utilization in all program activities  
funded wholly or in part by any U. S. Department of Transportation modal element.

This Agency, its contractors and subcontractors, which are the recipients of Federal-aid funds, agree  
to ensure DBE firms have the maximum opportunity to participate in the performance of contracts  
and subcontracts. In this regard, this Agency and all of its contractors and subcontractors will take  
all reasonable steps in accordance with 49 CFR Part 23 to ensure that DBE firms have the maximum  
opportunity to compete for and perform contracts.

**II. Disadvantaged Business Enterprise (DBE) Liaison Officer**

\_\_\_\_\_, \_\_\_\_\_  
is the DBE Liaison Officer for this agency and shall report to the \_\_\_\_\_  
\_\_\_\_\_. He/She will be assigned such staff as is necessary to fully implement the  
provision of 49 CFR Part 23 and such other DBE programs as may be required. The reporting  
structure and duties of support staff are shown on Attachment \_\_\_\_ .

**III Duties of the DBE Liaison Officer**

The DBE Liaison Officer shall develop, manage and implement the DBE Program on a day-to-day  
basis. Typical duties include, but are not limited to the following activities:



- Develop and carry out technical assistance programs for DBEs
- Arrange solicitations, time for the presentation of bid, quantities, specifications, and delivery schedules, so as to facilitate the participation of DBEs. Where such changes are found necessary to increase DBE utilization, they will be made in consultation and cooperation with the functional unit involved.
- Provide guidance to DBEs in overcoming barriers, such as inability to obtain bonding or financing.
- Carry out information and communication programs on contracting opportunities in a timely manner. Programs shall be bilingual where appropriate.
- Investigate the services offered by banks owned and controlled by Disadvantaged Business Enterprises.
- DBEs certified by Caltrans will be utilized. Said listing is to be made available to all project bidders. Said listing will include the following information: Name, address, telephone number, ethnic and/or sexual ownership, and type of work performed by firm.
- Prior to approval of the substitution of any DBE sub-contractor, the prime contractors will be required to prove performance of good faith efforts to replace the DBE with another eligible DBE.
- Establish a DBE overall annual goal. The goal shall be evaluated annually and adjusted as necessary.
- Establish an appropriate individual project DBE goal for each Federal-aid project advertised.
- Perform good faith analysis when the project goal is not achieved.
- Maintain such documentation as is necessary to verify performance of all activities included in this program.

#### IV. Public Notification

1. At the time of submittal of this program to the State Department of Transportation, a notice in both minority and majority local media will be published. Said publication shall include:
  - The annual overall DBE goal.
  - Notification that a description of how the goal was set is available for public inspection for a period of 30 days.
  - Notification that both U. S. DOT and this agency will accept comments on the goal for 45 days from the date of the notice. The notice shall advise interested parties that comments are for information purposes only.
2. This program will be reaffirmed by public notice annually at the time of publication of the overall goal. If substantial changes are made to this document, the entire document shall be subject notification noted in (1) above.
3. In addition to the forgoing, interested disadvantaged and majority contractor organizations will receive direct mailings of this complete program.

#### V. Establishment of Goal

1. The DBE goal will be established both annually (overall) and on a per contract basis. The overall goal will be based on planned contract activity for the coming year. The overall goal established will be subject to methodology and procedures established in 49 CFR Part 23, Subparts (C) and (D) and take effect on October 1st of each year.
2. The overall DBE goal established with this initial program is \_\_\_\_ % and covers the period October 1, 19\_\_\_\_ to September 30, 19\_\_\_\_.
3. Individual project goals will be established based on the following criteria:
  - Attainment of established overall goals.
  - Size of project.

- Opportunities for DBEs as subcontractors, vendors, and suppliers.
- Minority population of geographic area in which work is to be performed.
- DBE goals being utilized in the geographic area by other State, Federal or local jurisdictions.
- Availability of certified DBEs.
- Past experience on projects similar to the project being evaluated.
- Such other factors as may affect the utilization of DBEs

Complete evaluation documentation will be retained for each project.

4. Projects which do not contain a specific goal will contain the following provisions:

- A. "Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement."
- B. DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provide under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

VI. Contract Procedure

This program shall be implemented through the utilization of a contract special provision which will be provided/updated as necessary by Caltrans' Office of Local Programs. These procedures require bidders to submit the names of DBE subcontractors and suppliers, a description of the work each is to perform or material to be furnished, and the dollar value of each DBE subactivity.

VII. DBE Notification

Projects will be advertised in local newspapers and minority focus newspapers when possible. These ads will include reference to DBE requirements and will indicate the DBE project goal.

DBE supportive service assistance centers will receive notification of projects scheduled to be advertised. Such centers will be afforded the opportunity to receive complimentary plans and specifications for projects within their geographical area of responsibility.

VIII. Selection Criteria for Projects with DBE Goal

Every project containing a DBE goal shall be evaluated by the DBE Liaison Officer or his/her designee to ascertain bidding contractors' efforts to attain the DBE goal. The award of any project must be concurred with by the DBE Liaison Officer or his/her designee before said contract may be awarded. Should there be disagreement between functional units concerning contractors' efforts to attain contract goals for DBE participation, the matter shall be referred to the \_\_\_\_\_ or his/her designee, for final determination.

Competitors that fail to meet the DBE goal and fail to demonstrate sufficient reasonable good faith efforts shall be declared non-responsive and ineligible for award of the contract.

All contracts that contain a DBE goal, pursuant to this policy, will be monitored on an ongoing basis by project personnel during the course of construction. The DBE Liaison Officer is to be immediately advised of any circumstance wherein contractor compliance with the DBE provision is questionable. The contractor shall submit a final report for each project which includes total payments to the prime contractor as well as any payments the prime contractor has made to DBE subcontractors, vendors and suppliers. If the report indicates the prime contractor has not achieved the project goal, project personnel shall attach an evaluation, in narrative form, of the reasons for failure to attain the goal and any corrective action that was taken.

Prime contractors will be required to notify the Agency of any situation in which regularly scheduled progress payments are not made to DBE subcontractors, vendors or suppliers.

IX. Counting DBE Participants

This agency, its contractors, and subcontractors shall count DBE participation in accordance with the provisions of Section 23.47, Title 49, of the Code of Federal Regulations.

X. Records and Reports

1. The DBE Liaison Officer shall maintain such records, and provide such reports, as are necessary to ensure full compliance with this policy. Such records and reports shall include, as a minimum, the following information:

- Awards to DBEs
- Awards to majority contractors
- Final project reports concerning DBE utilization
- Such other data as is needed to fully evaluate compliance with this program

2. The DBE Liaison Officer shall submit reports to Caltrans and/or to the appropriate U. S. DOT modal element as required.

XI. Complaints

Any complaints received by the Agency concerning this program will be investigated by :

\_\_\_\_\_. He/She will endeavor to resolve said complaints within 90 days of receipt by the DBE Liaison Officer. The appropriate DOT modal element and Caltrans will be furnished a copy of the complaint and may be invited to participate in the investigation/resolution. The DOT modal element and Caltrans will receive a complete investigative report on the complaint and may be requested to concur in the proposed disposition of said complaint.

Contractors will be directed to notify the Agency of any complaints they may receive concerning this program.

DISADVANTAGED BUSINESS ENTERPRISES (DBE) ANNUAL PLAN

TO: CALTRANS DISTRICT \_\_\_\_\_  
 District Local Assistance Engineer

The City/County/Region of \_\_\_\_\_  
 requests approval of an annual DBE goal of \_\_\_\_\_% for the Federal Fiscal Year \_\_\_\_\_,  
 beginning on \_\_\_\_\_ and ending on \_\_\_\_\_.

It is anticipated that the following Federal-aid projects will be advertised during this Fiscal Year with preliminary DBE participation levels established as shown. (Includes consultant preliminary engineering and construction contracts anticipated for award.)

<u>Fed. Proj. No.</u>	<u>Estimated Contract Items Cost</u>	<u>DBE Participation</u>	<u>Type of Work</u>
(1) _____	\$ _____	\$ _____	_____
(2) _____	\$ _____	\$ _____	_____
(3) _____	\$ _____	\$ _____	_____
(4) _____	\$ _____	\$ _____	_____
(5) _____	\$ _____	\$ _____	_____
Grand Total	\$ _____	\$ _____	
DBE _____ %			

- ( ) This goal meets the 10% minimum Federal requirement.
- ( ) Since this goal does not meet minimum 10% Federal requirement, an exemption in accordance with Section 5 is requested. (Justification for approval is enclosed.)

\_\_\_\_\_  
 DBE Liaison Officer

\_\_\_\_\_  
 Date